IN THE
SUPREME COURT OF MISSOURI

No. SC86335

CITY OF ST. CHARLES, MISSOURI,

Respondent,

v.

STATE OF MISSOURI, et al.,

Appellants.

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Richard G. Callahan, Judge

Appellants' Reply Brief

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Table of Contents

Table of Authorities

Cases:

Statutes and Constitutional Provisions:

Standard of Review

To be clear, the lower court did not hear evidence on the only count of the petition on which the City prevailed – Count V, in which the City claimed that SB1107 violated the single subject rule of Mo. Const. Article III, §23. That the lower court heard evidence is not in dispute, but the evidence pertained to Count I, in which the City claimed that the passage of the bill violated Mo. Const. Article III, §20(a). *See* Respondent's Brief, p. 8 ("The second trial on Count I was held on August 27, 2004. On that day, the Court granted [the State's] oral motion for directed verdict as to Count I.").

As detailed in the Appellants' opening brief, pp. 8-9, the parties filed cross-motions for summary judgment on Counts II-V. Neither side to the instant appeal points to any testimony of record or other facts tried to the court pertaining to Count V, because the only disputed issues with respect to that count were questions of law. Thus, contrary to the City's stated standard of review, Respondents' Brief, pp. 11-12, this Court need not defer to the trial court in reviewing the judgment pertaining to Count V, the only issue before this Court on appeal.

The purpose of the City's observation that the lower court did not specify the grounds on which it granted the new trial on Count I, and its argument concerning the presumption of error, Respondent's Brief, p. 11, is not clear. The City did not appeal the grant of the new trial, and "[i]t is too late after a disappointing result in the second trial to complain of the order granting a new trial." *Jones v. Columbia Mut. Ins. Co.*, 636 S.W.2d 132 (Mo. App. W.D. 1982). *See also* §512.020, RSMo (2000)(appeal lies from order granting new trial).

Argument

The City spends some seven pages of its brief addressing what it claims are the Court's different tests for a bill's compliance with Mo. Const. Article III, Section 23. *See* Respondent's Brief, pp. 12-18. Applying its "consistent precedents," the Court has articulated but one test where a challenger claims that a bill contains multiple subjects: The law will be upheld if "all provisions of the bill fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose." *Hammerschmidt v. Boone County,* 877 S.W.2d 98, 102 (Mo. banc 1994), *quoting Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 6 (Mo. banc 1984). The "subject" of a bill "includes all matters that fall within or reasonably relate to the general core purpose of the ... legislation." *Hammerschmidt,* at 102. The court "need not look beyond the title to determine the bill's subject," to the extent that the "bill's original purpose is properly expressed" therein. *Id*. The "one subject" is broadly read. *Id*.

In misapprehending the test, the City makes the same mistake that the Circuit Court did. That is, the City asks, as the Circuit Court asked, whether the provisions of SB1107 relate *to each other*, rather than applying the test that this Court requires, which is to ask whether all provisions of the bill fairly relate *to the subject of the bill* as expressed in the bill's title.

The title of SB1107 establishes the subject of the bill as "relating to emergency services." SLF 1. As discussed at length in Appellants' Brief, pp. 15-21, and applying the correct test, the only question for appeal is whether the TIF amendments fairly relate to emergency services, have a natural connection to emergency services, or are a means to

accomplish emergency services – and they do. Thus, the City's comparisons between various amendments contained in SB1107, e.g., the TIF amendments versus amendments relating to ambulances, defibrillators, and stretcher vans, is of no moment. *See* Respondent's Brief, p. 17.

The City would avoid the plain meaning of the title by arguing that the title is "amorphous." Respondents' Brief, pp. 15-17 (citing *Carmack v. Director, Mo. Dep't of Agriculture*, 945 S.W.2d 956, 960 (Mo. banc 1997)). Whether the City does so in order to resurrect its clear title challenge, or to conduct its own amorphous review of the contents of SB1107, its argument fails. First, the City did not cross-appeal the lower court's rejection of its clear title challenges. *See* LF 8-35; 196-200; LF 203 (dismissing the City's Count III – Article III, Section 23 challenge based on alleged under-inclusive title; and Count IV – Article III, Section 23 challenge based on alleged over-inclusive title). Where a party fails to cross-appeal, the reviewing court should not consider any portion of the judgment adverse to it. *Goldberg v. State Tax Comm'n*, 618 S.W.2d 635, 642 (Mo. 1981); *Committee on Legis. Research v. Mitchell*, 886 S.W.2d 662, 665 (Mo. App. WD 1994).

Second, the City's argument that the title, "relating to emergency services," cannot be ascertained from its plain language is an unsupported stretch. Bill titles are construed in their plain and ordinary sense. *Mo. State Medical Ass'n v. Mo. Dept. of Health*, 39 S.W.3d 837, 841 (Mo. banc 2001). Given the presumption of constitutionality that the Court must afford a challenged bill, *Westin*, 664 S.W.2d at 5, the Court may never *assume*, as the City suggests it should, that a title is broad and amorphous. In *Corvera Abatement Tech. v. Air*

Conservation Comm'n, 973 S.W.2d 851, 862 (Mo. banc 1998), the Court rejected such an invitation, when it declined to assume that the title "environmental control" must encompass the universe of possibilities: "Nothing in the title of [the bill] indicates that the term *environmental control* must be defined to include anything whatsoever that may indirectly protect the environment. This Court concludes, therefore, that the term *environmental control* means environmental regulation in its plain and ordinary sense." (Emphasis in original.)

Here, the title, "relating to emergency services," is a clear title, that is not so broad and amorphous as to fail to give notice of SB1107's content.[1] The title is clear and constitutionally sufficient, in the same way that the titles "health services" and "environmental control" were clear and constitutionally sufficient titles of their respective bills. *See Mo. State Medical*

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[1] SB 1107 contains a host of provisions adding to or modifying statutes that affect the functioning and management of persons and entities responsible for providing emergency services. For example, the bill affects the election process within ambulance districts by mandating their division into sub-districts, and by defining the qualifications, number, and method of election and recall of members of the board of directors of the districts. SLF 6-9 (§§ 190.050, 190.051). It affects membership on a fire protection district board. SLF 45-46 (§§ 321.130, 321.180). It provides for new sales tax provisions for some emergency service districts. SLF 46 (§ 321.552.1). And it of course prohibits new tax increment financing projects certain areas that are designated as a flood plain by the Federal Emergency Management Agency. SLF 5-6 (§ 99.847).

Ass'n v. Mo. Dep't of Health, 39 S.W.3d 837, 841 (Mo. banc 2001)(the title "health services" was clear and constitutionally sufficient, where bill covered health insurance, medical records, and pre-operation information concerning breast implants); *Corvera*, 973 S.W.2d at 861-62 (the title "relating to environmental control" was clear and constitutionally sufficient titles, where bill created the Emergency Response Commission, regulated the ownership and use of underground storage tanks and asbestos abatement projects, and contained provisions for certification and training requirements for asbestos contractors).

Finally, the City essentially argues that the bill's components are not a perfect fit with the title, and as a corollary thereto, disagrees with the appellants' characterization of certain components. *See* Respondents' Brief, pp. 19-23. Again, the arguments are of no moment. The single subject test does not ask for a perfect fit, it asks whether all provisions of the bill "fairly relate" to the same subject, have a "natural connection" with the same subject, or are "incidents or means" to accomplish its purpose. *Hammerschmidt*, 877 S.W.2d at 102. The subject is gleaned from the title, and the subject is broadly read. *Id*. Thus, whether the parties agree on the extent to which funding or restrictions are established by the TIF amendments does not change the fact that the TIF amendments fairly relate to emergency services, have a natural connection to the subject, or are an incident or means to accomplish the bill's purpose.

Conclusion

Senate Bill 1107 comports with Mo. Const. Art. III, § 23 because it does not contain multiple subjects. Consequently, the circuit court's judgment invalidating the TIF Amendments

under Mo. Const. Art III, § 23, and severing them from the bill, should be reversed, and judgment in favor of the defendants should be entered accordingly.

Respectfully submitted,

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Certification of Service and of Compliance with Rule 84.06(b) and (c)

The undersigned hereby certifies that on this 22nd day of February, 2005, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 1,627 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

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Assistant Attorney General